

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 239 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT - Appellant(s)**Versus****JABUKUMAR KESHAVAL MEHTA - Opponent(s)**

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Appearance :

MR MUKESH PATEL, ADDL PUBLIC PROSECUTOR for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**Date : 20/12/2006****ORAL JUDGMENT**

1. Heard Shri Patel for the Appellant- State of Gujarat. None appears on behalf of the respondent-original accused though duly served.

2. The appellant- State of Gujarat has preferred

this appeal under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Code" for sake of brevity) challenging order of acquittal dated 26.11.1992 passed by the J.M.F.C., Rajkot in Criminal Case No. 2594 of 1986, acquitting the present appellant- accused of the charge of commission of offence under Sections 11 and 32(1) and Rule 25, 32(1) of the Bombay Weights and Measures Act.

3. The brief facts leading to filing this appeal deserve to be set out as under:-

3.1. The original complainant- Junior Inspector, Weights and Measures, Rajkot, on 12.9.1986, visited the petrol pump of the original accused- present respondent with Senior Inspector, Weights and Measures Shri A.S. Parikh in presence of panch for verifying the instructions employed for selling petrol, oil, etc. Senior Inspector Shri Parikh had verified the discharge of petrol from a petrol pump, which was under operation. It was noticed that the pump was discharging less petrol than the indicated on the meter. In the first instance, 5 Liter petrol was taken in the measure unit of 5 liter and it was found that the actual discharge of petrol was 4900 M.Liter. Thus, 100 M.Ltr. less petrol was discharged. Five times, 5 Ltr. petrol was taken and each time, different quantity less than 5 Ltr. was discharged. Some times 80 M.Ltr. petrol was less and some times 90 M.Ltr. less petrol was found. Thus, there was a

breach of Section 32(1) of the Act and it was also noticed that the measuring units lying for selling oil, etc. were not remarked, verified or got stamped by the vendor, which is supposed to be done periodically at least annually so far as Rajkot city was concerned and, therefore, panchnama was drawn in presence of panch witnesses and pump was sealed. Later on, seal was opened at the behest of the complainant. Necessary papers were put up for lodging the prosecution, which was accorded and, therefore, the complainant lodged a complaint against the accused-respondent in the Court of Judicial Magistrate First Class on 17.09.1986, which came to be registered as Criminal Case No. 2594 of 1986. The Trial Court summoned the accused and his plea is recorded at Exh. 12. The accused denied the charge and claimed to be tried. After recording evidence of the prosecution, the case was put to the accused and his further statement came to be recorded under Section 313 of the Code, wherein also the accused denied the case of the prosecution. After perusing the material on record, the Trial Court has come to the conclusion that the prosecution did not prove its case beyond doubt and, therefore, acquitted the accused of the charge of commission of offence under Sections 11, 32(1) read with Rule 25 and 32(1) of the Act and Rules, vide its order dated 26.11.1992, which is impugned in the present appeal.

4. Heard Shri Patel. Shri Patel has submitted that the Trial Court has patently erred in not

appreciating the fact that non-examination of the panch witnesses cannot be treated as vitiating the case of the prosecution. Shri Patel has submitted that two inspectors, i.e. Junior Inspector and Senior Inspector, have been examined by the prosecution and they have given testimony in support of the case of the prosecution. Shri Patel has submitted that the Trial Court ought to have appreciated the facts in its true perspective and ought to have imposed appropriate penalty. Therefore, the acquittal order deserves to be quashed and set aside.

5. This Court has perused the record and proceedings and heard Mr. Patel at length. This Court is unable to agree with the submissions of Shri Patel for quashing and setting aside the order of acquittal. This being an acquittal appeal, this Court is mindful that unless and until it is demonstrated by the appellant for suspending the order of acquittal, it will necessarily have resulted into mis-carriage of justice, the order of acquittal need not be disturbed in acquittal appeal. It also deserves to be noted that the findings arrived at during the trial are based upon the Trial Court's actual observation of witnesses and such findings are ordinarily not required to be disturbed unless and until it is shown to be perverse and absolutely contrary to the material on record. Against the aforesaid established preposition of law, the plea for quashing of the acquittal order deserves to be examined.

6. Following emerges from reading of the record, which has remained undisputed :

- (1) The complainant was discharging his duty as Junior Inspector when the pump in question was visited. It is produced on record by the prosecution as to what was the exact mode of appointment of Junior Inspector. The Act is silent so far as the Junior Inspector is concerned, that talks only about the Inspector. It deserves to be borne in mind that this can envisage filing of the complaint by the competent authority authorised by the controller under Section 39 of the Act.
- (2) The incident appears to have occurred on 12.9.1986 on a petrol pump wherefrom petrol was taken for measuring. It has also come out in the testimony of the witnesses that no selling activities had been going on, and petrol was delivered to any customer at the time of raid.
- (3) The panch witnesses have not been examined despite the matter was adjourned time and again enabling the prosecution to fetch them.
- (4) The panchnama is admittedly not bearing the signature of the complainant and it was produced and exhibited during the testimony of the complainant himself, who has admitted that he has written the panchnama but he has not affixed

his signature thereon.

- (5) The specific plea was taken by an application, which is at Exh. 60 that the complainant cannot be said to be authorised person to institute the complaint against the accused. The only officers mentioned in Section 39 are entitled and authorised to institute proceedings and file complaint.
- (6) It is sought to be controverted by saying that by General Order dated 15.09.1979, the Controller had authorised all Inspectors, Deputy Controllers, Weights and Measures to institute prosecution as envisaged under subsection (1) of Section 39 of the Act.
- (7) Measuring Units which were supposed to be stamped every year and verification has to be done by the competent authority at the request of the accused, were collected from the place where anyone could have placed them. They were not collected from the possession of the accused.

7. In view of the aforesaid facts and circumstances, it cannot be said that the basic and initial ingredients to bring home guilt on the part of the accused have not been fulfilled by the prosecution. It cannot be said that the prosecution has not proved its case beyond reasonable doubt. The

cross-examination of both the witnesses who are the officers of the Government and who were party carrying raid deserves to be noted that at many places, they themselves have stated that the pump was sealed and seals were intact and untempered and, therefore, after these many years, in acquittal appeal, this Court is of the view that the order of acquittal need not be disturbed.

8. In the result, the order of acquittal impugned in the appeal does not call for any interference and, therefore, the appeal fails and is, accordingly dismissed.

(S.R.BRAHMBHATT, J.)

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